

**BOARD OF COUNTY COMMISSIONERS
AGENDA ITEM SUMMARY**

MEETING DATE:

DIVISION: COUNTY ADMINISTRATOR

BULK ITEM: YES

DEPARTMENT: AIRPORTS

STAFF CONTACT PERSON: Peter Horton

AGENDA ITEM WORDING: Approval of an agreement with Gulfstream International Airlines, to provide Air Service to the Florida Keys Marathon Airport.

ITEM BACKGROUND: Gulfstream is the carrier for Continental Airlines. The agreement calls for at least two non-stop rounds trips per day to both Tampa International Airport and Ft. Lauderdale International Airport. The total between the two destinations will be eight flights a day.

PREVIOUS RELEVANT BOCC ACTION: Approval of the Small Community Air Service Development Program grant, (SCASDP) September 7, 2005, which pays for this air service agreement.

CONTRACT/AGREEMENT CHANGES: New Agreement

STAFF RECOMMENDATION: Approval

TOTAL COST: \$300,000.00

BUDGETED: Yes

COST TO AIRPORT: None

SOURCE OF FUNDS: \$750,000.00 SCASDP grant

COST TO PFC: None

COST TO COUNTY: None

REVENUE PRODUCING: n/a

AMOUNT PER MONTH /YEAR:

APPROVED BY: County Attorney X

OMB/Purchasing X

Risk Management X

AIRPORT DIRECTOR APPROVAL _____


Peter J. Horton

DOCUMENTATION: Included X

Not Required

AGENDA ITEM # _____

DISPOSITION: _____

/bev
APB

MONROE COUNTY BOARD OF COUNTY COMMISSIONERS

CONTRACT SUMMARY

Contract #

Contract with: Gulfstream International Airlines

Effective Date: Execution

Expiration Date:

Contract Purpose/Description: To provide air service to the Florida Keys Marathon Airport.

Contract Manager: Bevette Moore
(name)

5195
(Ext.)

Airports - Stop # 5
(Department/ Stop)

for BOCC meeting on: 3/15/06

Agenda Deadline: 2/28/06

CONTRACT COSTS

Total Dollar Value of Contract: \$300,000.00

Current Year Portion: None

Budgeted? Yes

Account Codes: 403-63555-GAKA52

Grant: Yes - SCASDP

County Match: Local match

ADDITIONAL COSTS

Estimated Ongoing Costs:
(not included in dollar value above)

For: .
(eg. maintenance, utilities, janitorial, salaries, etc.)

CONTRACT REVIEW

	Date In	Changes Needed Yes No	Reviewer	Date Out
Airports Director	<u>2/28/06</u>	() (✓)	<u>Peter Horton</u>	<u>2/28/06</u>
Risk Management	<u>2/28/06</u>	() (✓)	<u>M. Smith</u> for Risk Management	<u>2/28/06</u>
O.M.B./Purchasing	<u> / / </u>	() ()	<u>[Signature]</u> for OMB	<u>2/28/06</u>
County Attorney	<u>2/28/06</u>	() (✓)	<u>[Signature]</u> County Attorney	<u>2/28/06</u>

Comments: _____

AIR SERVICE DEVELOPMENT AGREEMENT

Whereas, Monroe County is the owner and operator of the Florida Keys Marathon Airport (the "Airport" or "MTH" or the "County") and desires to upgrade air service to the Airport; and

Whereas, Gulfstream International Airlines (the "Airline" or "Gulfstream") is willing to provide scheduled air service to the Airport, in accordance with the terms and conditions of this Agreement;

Now, therefore, the parties agree as follows:

1. The Airline's Obligations:

- A. Service Commitment. From on or about November 1, 2006 for one calendar year (service period) the Airline shall provide scheduled air service between MTH and the Tampa International Airport (TPA) and Fort Lauderdale International Airport (FLL), including at least two nonstop roundtrips per day on both routes (New Service). The Airline may adjust the foregoing service levels in its sole discretion on weekends and holidays, as necessary to meet traffic demand.
- B. Flight Schedule. The Airline will determine the schedule for the New Service in its sole discretion, provided that the Airline will use commercially reasonable efforts to schedule the New Service in a manner that will maximize the Airline's passenger revenues. The Airline anticipates that the New Service will be scheduled as set forth in Appendix A hereto (Initial Schedule). The Airline will publish the Initial Schedule in the same manner as the Airline publishes its other flight schedules. In this regard, the Initial Schedule will be available for sale by August of 2006.
- C. Air Service Brand. The New Service will be offered to the public under the brand of the code-sharing host carrier of the Airline. The Airline will also offer service via code sharing arrangements with other airlines as is commercially feasible.
- D. Airfare Price Points & Revenue Management. The Airport will aggressively market the New Service in conjunction with existing domestic and international marketing of the Florida Keys. An essential element of this effort must be the same or similar airfare pricing by the Airline at both Key West and Florida Keys Marathon airports. Accordingly, the Airline agrees to make every effort to offer airfares at the Airport that are the same or similar to those the Airline offers at Key West. The Airline also agrees to assist the Airport in its efforts to work with the Airline's code-sharing partner carriers to ensure they also offer the same or similar airfares at both airports. The Airline will determine the seat allocations and overbooking levels for the New Service at

its sole discretion. The Airline will use commercially reasonable efforts to price and yield manage the MTH market in a manner that will maximize the Airline's passenger revenues but also in a manner which is consistent with the Airline's network revenue management practices.

E. Conditions of Carriage. The Airline will operate the New Service under the same conditions of carriage that it operates under at Key West.

F. Definition of New Service Revenue. Revenue generated from the New Service will come from the following sources;

- Local Passenger Traffic (MTH-FLL or MTH-TPA) = all revenue
- Airline Online Connecting Revenue (example MTH – JAX via TPA) = prorate of total revenue via standard Gulfstream online multi leg revenue allocation method
- Code-share partner connecting revenue (example online to Continental) = Gulfstream's share of ticket revenue per existing agreement with code share partner
- Interline revenue (example connecting to US Airways on a joint fare) = Gulfstream's share of ticket revenue per existing agreement with interline partner
- All MTH New Service cargo and mail revenue

G. Reporting of New Service Revenue. The Airline will provide the Airport with a monthly report of the number of passengers carried on the flights operated as part of the New Service and the average net fare paid by such passengers (Actual Passenger Traffic & Revenue Report). This report will be sent to the Airport in accordance with the following schedule:

<u>Report</u>	<u>Due Date</u>
Monthly Actual Passenger Traffic & Revenue	60 days after each month

Final report	January 4, 2008
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The Airport will not disclose the O&D Traffic & Fare information or the Actual Revenue information it receives pursuant to this Section 1.G. to any third party without the Airline's prior written consent.

H. The Airline will operate its schedules at the Airport to the same level of on-time performance and flight completion as it does at Key West. The Airport reserves the right to withhold a portion of any revenue obligation to the

D. Rates and Charges / Facility Set-up. The Airport shall waive all MTH Airport landing fees, utilities, rent charges and related charges for the New Service for the term of this Agreement.

3. Term and Termination. This Agreement shall be effective on the date first set forth above and shall remain in effect for 12 calendar months from that date, provided, however, that either party may terminate this Agreement at any time upon one hundred and twenty (120) days prior written notice to the other party. In addition, either party may terminate this Agreement on thirty (30) days prior written notice if the other party breaches a material term of this Agreement and such breach is not cured during the thirty (30) day termination notice period.
4. Representations. Each party represents and warrants that it has obtained all necessary corporate and other approvals to enter this Agreement and the person signing this Agreement on behalf of the party is duly authorized. In addition, the Airport represents and warrants that entering this Agreement and performance of its obligations hereunder is consistent with all-applicable local, state and federal laws, rules, regulations and ordinances.
5. Survival. Section 2 of this Agreement shall survive termination of this Agreement for purposes of determining any amounts due and owing between the parties and any related rights and obligations of the parties.
6. Governing Law and Venue. This agreement shall be governed by and construed in accordance with the laws of the State of Florida applicable to contracts made and to be performed entirely in the State. In the event that any cause of action or administrative proceeding is instituted for the enforcement or interpretation of this agreement, each party agrees that venue will lie in the appropriate court or before the appropriate administrative body in Monroe County, Florida.
7. Assignment. Neither party shall assign this Agreement without the prior written consent of the other party.
8. Notices. All notices, requests, demands and other communications hereunder shall be in writing, transmitted by facsimile or mail. Such communication will be considered received when the party receiving the notice acknowledges it by facsimile or mail. Each party shall acknowledge receipt as soon as practicable but in any event within 2 business days of receiving any notice or demand. In the event receipt is not duly acknowledged, a notice sent by mail shall be deemed to have been served within seven (7) business days. Notice given by fax shall be considered delivered upon receipt by the sender of the fax transmission report confirming that the fax has been successfully transmitted. Addressee has the right to notify sender within the following two (2) business days that the fax was transmitted illegibly or incorrectly. Notices shall be transmitted:

Airline should New Service on-time and completion performance fall below that of Key West in any month.

2. The Airport's Obligations:

- A. Revenue Commitment. If the Actual Total Market Origination and Destination (O&D) Revenue ("Actual Revenue") for the Effective Period is less than the Target Total Market O&D Revenue ("Target Revenue") for the Effective Period, the Airport shall pay the Airline an amount equal to the difference between the Actual Revenue and the Target Revenue for the Effective Period, where

Actual Revenue is the total revenue from the Actual Passenger Traffic & Revenue report plus non-passenger revenues such as cargo, mail, and excess luggage revenue received by the Airline for the New Service, pursuant to Section 1.C. above;

Target Revenue is the sum of the total number of New Service flights operated per month between MTH and TPA x \$1,200 plus the total number of New Service flights operated per month between MTH and FLL x \$900.

Provided, that if the Total Actual Revenue is greater than the Total Target Revenue for the Service Period, no payment is due to the Airline pursuant to this Section 2.A, and

Further provided, that the Airport's total payment obligation to the Airline under this Section 2.A. for the Service Period shall not exceed \$300,000.

- B. Settlement and Payment. Upon the termination or expiration of this agreement, the parties will conduct a settlement of any amounts due pursuant to this Section 2 within ninety (90) days of the termination or expiration date. The final settlement amount, if any, will be paid to the Airline within thirty (30) days after receipt of an invoice from the Airline. The settlement will take into account Actual Revenue and Target Revenue on a cumulative basis over the Service Period.
- C. Advertising & Marketing Support. During the term of this Agreement the Airport will advertise and promote the New Service in accordance with the New Service Marketing Plan. The Airline will provide ad copy appropriate for the New Service Marketing Plan and/or approve copy and content for the advertisements and promotional efforts Airport's as needed for this Marketing Plan.

- (1) if to the Airport, to the attention of:

James R. Paros
Marathon Airport Manager
9400 Overseas Highway, Suite 200
Marathon, Florida 33050
Phone 305 289 6002
Fax 305 289 6071

- (2) if to the Airline, to the attention of:

Mr. David Hackett, President
Gulfstream International Airlines
3201 Griffin Road, 4th Floor
Fort Lauderdale, Florida 33312
Phone 954 985 1500 ext 245

If there is any change to or modification of any address or facsimile number set forth above, the party changing such address or number shall use all reasonable efforts to promptly notify the other party of such change.

9. Entire Agreement This Agreement sets forth the entire agreement and understanding between the parties as to the subject matter hereof, and merges and supersedes all prior discussions, agreements, and understandings concerning the subjects covered in this Agreement. Unless expressly provided herein, this Agreement may not be changed or modified, except by written agreement signed by the Parties to be bound thereby.
10. Force Majeure, Etc. Neither party will be liable to the other for any loss, injury, damage or delay resulting from one or more of the following: an Act of God, seizure under legal process, governmental sanctions, quarantine restrictions; fire, fog, flood, or other weather-related reason or failure or refusal on the part of any government or governmental agency to grant or issue approvals, clearances, exemptions, permits or operating authority, or recession or revocation thereof by any government or governmental agency; damage to or destruction of aircraft or other flight equipment; mechanical difficulties or breakdowns; unavailability of fuel; riots or civil commotion; strikes, lockouts or labor disputes (whether resulting from disputes between either Party and its employees or between other parties); U.S military or airlift emergency or substantially expanded U.S. military airlift requirements as determined by the U.S. government; activation of the U.S. Civil Reserve Air Fleet; war or hazards or dangers incident to a state of war; or any other acts, matters or things, whether or not of a similar nature, which are beyond the control of either party and which shall directly or indirectly, prevent, delay, interrupt, or otherwise adversely affect the furnishing, operation or

performance of such transportation. In the event of a force majeure that prevents the Airline from performing the terms of this Agreement, or in the event that the Airline exercises its right to suspend performance of the terms of this Agreement pursuant to the provisions of this Section, the Airport shall have no obligation to make the payments required by Section 2(A) for so long as the Airline does not perform the terms of this Agreement as a result of said force majeure or the Airline's election not to perform the terms of this Agreement in the event of an airlift emergency or if the United States Civil Reserve Air Fleet is activated. Each party will immediately advise the other party regarding any event of force majeure, as described above, that may affect its performance hereunder and will keep the other party apprised of efforts made to remedy the problem.

11. Construction, Severability, Third Party Beneficiary. This Agreement shall not be construed against the party preparing it, but shall be construed as if both parties jointly prepared it and any uncertainty or ambiguity shall not be interpreted against either party. If any term, covenant, condition or provision of this agreement (or the application thereof to any circumstance or person) shall be declared invalid or unenforceable to any extent by a court of competent jurisdiction, the remaining terms, covenants, conditions and provisions of this agreement, shall not be affected thereby; and each remaining term, covenant, condition and provision of this agreement shall be valid and shall be enforceable to the fullest extent permitted by law unless the enforcement of the remaining terms, covenants, conditions and provisions of this agreement would prevent the accomplishment of the original intent of this agreement. Each party agrees to reform the agreement to replace any stricken provision with a valid provision that comes as close as possible to the intent of the stricken provision. NO PERSON OR ENTITY, OTHER THAN AIRLINE OR THE AIRPORT, SHALL HAVE ANY RIGHTS, CLAIMS, BENEFITS OR POWERS UNDER THIS AGREEMENT AND THIS AGREEMENT SHALL NOT BE CONSTRUED OR INTERPRETED TO CONFER ANY RIGHTS, CLAIMS, BENEFITS OR POWERS UPON ANY THIRD PARTY. THERE ARE NO THIRD-PARTY BENEFICIARIES OF THIS AGREEMENT.
12. Relationship Between the Parties. Each party, in its performance under this Agreement, is and shall be engaged and acting as an independent contractor in its own separate business. Each party shall retain complete and exclusive control over its personnel and operations and the conduct of its business. Neither party nor its officers, employees or agents shall in any manner make any representation or take any actions which may give rise to the existence of any employment, agency, partnership or other like relationship between the parties hereunder. The employees, agents and independent contractors of each party shall be and remain employees, agents and independent contractors of such party for all purposes, and under no circumstances shall be deemed to be employees, agents or independent contractors of the other party. Neither party shall have supervisory power or control over any employees, agents or independent contractors employed or engaged by the other party.

13. Books, Records and Documents. Gulfstream shall maintain all books, records, and documents directly pertinent to performance under this agreement in accordance with generally accepted accounting principles consistently applied. Each party to this agreement or their authorized representatives shall have reasonable and timely access to such records of each other party to this agreement for public records purposes during the term of the agreement and for four (4) years following the termination of this agreement. The County, acting through its Finance Director or other authorized representative, shall have the right to inspect and audit Gulfstream's books of accounts and other records directly generated at the Florida Keys Marathon Airport facility or otherwise pertaining to this agreement. Knowingly furnishing the County a false statement of its Monthly Actual Passenger Traffic And Revenue under the provision hereof will constitute a default by Gulfstream of this agreement and the County may, at its option, declare this lease terminated. Gulfstream retains the right to have its controller or a representative assigned by its controller to be present during any inspection or audit by the County. Ten (10) business days notice must be given of intent to audit by the County to allow Gulfstream's controller sufficient time to schedule said presence. Nothing contained within this section waives attorney/client or attorney work product privilege.
14. Attorney's Fees and Costs. Each party agrees that in the event any cause of action or administrative proceeding is initiated or defended by any party relative to the enforcement or interpretation of this agreement, the prevailing party shall be entitled to reasonable attorney's fees, court costs, investigative and out-of-pocket expenses, as an award against the non-prevailing party, and shall include attorney's fees, court costs, investigative, and out-of-pocket expenses in appellate proceedings. Mediation proceedings initiated and conducted pursuant to this agreement shall be in accordance with the Florida Rules of Civil Procedure and usual and customary procedures required by the Circuit Court of Monroe County.
15. Binding Effect. The terms, covenants, conditions, and provisions of this agreement shall bind and inure to the benefit of the County and Gulfstream and their respective legal representatives, successors, and assigns.
16. Claims for Federal or State Aid. Each party agrees that each shall be, and is, empowered to apply for, seek, and obtain federal and state funds to further the purpose of this agreement; provided that all applications, requests, grant proposals, and funding solicitations shall be approved by each party prior to submission.
17. Adjudication of Disputes or Disagreements. Each party agrees that all disputes and disagreements shall be attempted to be resolved by meet and confer sessions between representatives of each of the parties. If no resolution can be agreed upon within thirty (30) days after the first meet and confer session, the issue or issues shall be discussed at a public meeting of the Monroe County Board of

County Commissioners. If the issue or issues are still not resolved to the satisfaction of the parties, then any party shall have the right to seek such relief or remedy as may be provided by this agreement by Florida law.

18. Cooperation. In the event any administrative or legal proceeding is instituted against either party relating to the formation, execution, performance, or breach of this agreement, each party agrees to participate, to the extent required by the other party, in all proceedings, hearings, processes, meetings, and other activities related to the substance of this agreement or provision of the services under this agreement. Each party specifically agrees that no party to this agreement shall be required to enter into any arbitration proceedings related to this agreement. A party who requests the other's party's participation in accordance with the terms of this section shall pay all reasonable expenses incurred by the other party by reason of such participation.
19. Nondiscrimination. Each party agrees that there will be no discrimination against any person, and it is expressly understood that upon a determination by a court of competent jurisdiction that Gulfstream has discriminated against any person, this agreement automatically terminates without any further action on the part of any party, effective the date of the Court order. Each party agrees to comply with all Federal and Florida Statutes, and all local ordinances, as applicable, relating to nondiscrimination. These include but are not limited to: 1) Title VI of the Civil Rights Act of 1964 (PL 88-352) which prohibits discrimination on the basis of race, color or national origin; 2) Title IX of the Education Amendment of 1972, as amended (20 USC ss. 1681-1683, and 1685 -1686), which prohibits discrimination on the basis of sex; 3) Section 504 of the Rehabilitation Act of 1973, as amended (20 USC s. 794), which prohibits discrimination on the basis of handicaps; 4) The Age Discrimination Act of 1975; as amended (42 USC ss. 6101-6107) which prohibits discrimination on the basis of age; 5) The Drug Abuse Office and Treatment Act of 1972 (PL 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; 6) The Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (PL 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; 7) The Public Health Service Act of 1912, ss. 523 and 527 (42 USC ss. 690dd-3 and 290ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records; 8) Title VIII of the Civil Rights Act of 1968 (42 USC s. et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; 9) The Americans with Disabilities Act of 1990 (42 USC s. 1201 Note), as may be amended from time to time, relating to nondiscrimination based of disability; 10) Secs. 13-101, et seq., Monroe County Code, relating to discrimination based on race, color, sex, religion, disability, national origin, ancestry, sexual orientation, gender identify or expression, familial status or age; 11) Any other nondiscrimination provisions in any Federal or state statutes which may apply to the parties to, or the subject matter of, this agreement.

20. Covenant of No Interest. Each party covenants that neither presently has any interest, and shall not acquire any interest, which would conflict in any manner or degree with its performance under this agreement, and the only interest of each is to perform and receive benefits as recited in this agreement.
21. Code of Ethics. The County agrees that officers and employees of the County recognize and will be required to comply with the standards of conduct for public officers and employees as delineated in Section 112.313, Florida Statutes, regarding, but not limited to solicitation or acceptance of gifts; doing business with one's agency; unauthorized compensation; misuse of public position, conflicting employment or contractual relationship; and disclosure or use of certain information.
22. Public Access. The parties shall allow and permit reasonable access to, and inspection of, all documents, papers, letters or other materials in its possession or under its control subject to the provisions of Chapter 119, Florida Statutes, and made or received by the parties in conjunction with this agreement; and the County shall have the right to unilaterally cancel this agreement upon violation of this provision by Gulfstream. This section shall not apply to confidential commercial information. Nothing contained within this section waives attorney/client or attorney work product privilege.
23. Non-Waiver of Immunity. Notwithstanding the provisions of Sec. 286.28, Florida Statutes, the participation of the parties in this agreement and the acquisition of any commercial liability insurance coverage, self-insurance coverage, or local government insurance pool coverage shall not be deemed a waiver of immunity to the extent of liability coverage, nor shall any contract entered into by the County be required to contain any provision for waiver.
24. Privileges and Immunities. All of the privileges and immunities from liability, exemptions from laws, ordinances, and rules and pensions and relief, disability, workers' compensation, and other benefits which apply to the activity of officers, agents, or employees of any public agents or employees of the County, when performing their respective functions under this agreement within the territorial limits of the County shall apply to the same degree and extent to the performance of such functions and duties of such officers, agents, volunteers, or employees outside the territorial limits of the County.
25. Legal Obligations and Responsibilities. Non-Delegation of Constitutional or Statutory Duties. This agreement is not intended to, nor shall it be construed as, relieving any participating entity from any obligation or responsibility imposed upon the entity by law except to the extent of actual and timely performance thereof by any participating entity, in which case the performance may be offered in satisfaction of the obligation or responsibility. Further, this agreement is not intended to, nor shall it be construed as, authorizing the delegation of the

constitutional or statutory duties of the County, except to the extent permitted by the Florida Constitution, State Statute, and case law.

26. AIRPORT SECURITY

- a. **General.** The Federal Transportation Security Administration is the federal agency primarily responsible for overseeing the security measures utilized by the airport owner pursuant to the relevant provisions of Chapter 49, United States Code, and regulations adopted under the authority of the Code, including but not limited to 49 CFR 1540, et seq. Violations of the statutes or regulations may result in severe civil monetary penalties being assessed against the airport operator. It is the intent of the airport operator that the burdens and consequences of any security violations imposed upon the airport operator as a result of actions by an airport tenant or the airport tenant's employees, agents, invitees, or licensees shall be borne by the airport tenant.
- b. **Airport Tenant Defined.** An airport tenant means any person, entity, organization, partnership, corporation, or other legal association that has an agreement with the airport operator to conduct business on airport property. The term also includes an airport tenant as defined in 49 CFR 1540.5. Each signatory to this agreement, other than the airport operator, is an airport tenant.
- c. **Airport Operator Defined.** As used in this agreement, airport operator means Monroe County, Florida, its elected and appointed officers, and its employees.
- d. **Airport Property Defined.** Airport property shall mean the property owned or leased by, or being lawfully used by, the airport operator for civil aviation and airport-related purposes. For purposes of this agreement, airport property is the property generally referred to as the Key West International Airport, the Florida Keys Marathon Airport, or both as may be set forth in this agreement.
- e. **Inspection Authority.** The airport tenant agrees to allow Transportation Security Administration (TSA) authorized personnel, at any time or any place, to make inspections or tests, including copying records, to determine compliance of the airport operator or airport tenant with the applicable security requirements of Chapter 49, United States Code, and 49 CFR 1540, et seq.
- f. **Airport Security Program.** The airport tenant agrees to become familiar, to the extent permitted by the airport operator, with the Airport Security Program promulgated by the airport operator and approved by TSA, and also agrees to conform its' operations and business activities to the requirements of the Airport Security Program.
- g. **Tenant Security Program.** If permitted under TSA regulations, the airport tenant may voluntarily undertake to maintain an Airport Tenant Security Program as referred to in 49 CFR 1542.113. If the airport tenant voluntarily promulgates an

Airport Tenant Security Program that is approved by TSA, such program, as may be amended and approved from time to time, shall be automatically incorporated into this agreement.

h. **Breach of Agreement.** Should TSA determine that the airport tenant or one or more of the airport tenant's employees, agents, invitees, or licensees has committed an act or omitted to act as required, and such act or omission is a violation which results in TSA imposing a civil penalty against the airport operator in accordance with TSA's Enforcement Sanction Guidance Policy, such determination and imposition of a civil penalty by TSA shall be considered a significant breach of this agreement.

(1) **Minimum Violation.** If the violation is the first or second violation attributed to the airport tenant and is a civil penalty "minimum violation" as provided for in TSA's Enforcement Sanction Guidance Policy, the airport tenant may cure the breach by paying to the airport operator the costs incurred by the airport operator in the way of any fines or penalties imposed by the TSA. If the violation is a third violation, or there are multiple violations in excess of two violations, that is or are a civil penalty "minimum violation," the airport tenant shall pay to the airport operator any fines or penalties imposed by TSA and, further, the airport operator shall have the right to unilaterally cancel this agreement, such cancellation to be effective thirty (30) calendar days after receipt by the airport tenant of written notice of cancellation of this agreement by the airport operator.

(2) **Moderate Violation.** If the violation is the first or second violation attributed to the airport tenant and is a civil penalty "moderate violation" as provided for in TSA's Enforcement Sanction Guidance Policy, the airport tenant may cure the breach by paying to the airport operator the costs incurred by the airport operator in the way of any fines or penalties imposed by the TSA. The airport tenant may cause all of airport tenant's employees involved in the airport tenant's business operations on the airport property to undergo such security training as may be required by the airport operator. The total cost of the training shall be paid for by the airport tenant. If the violation is a third violation, or there are multiple violations in excess of two violations, that is or are a civil penalty "moderate violation," the airport tenant shall pay to the airport operator the costs incurred by the airport operator in the way of any fines or penalties imposed by the TSA. In the case of a third moderate violation, the airport operator shall have the right to unilaterally cancel this Agreement, such cancellation to be effective thirty (30) calendar days after receipt by the airport tenant of written notice of cancellation of this agreement by the airport operator.

(3) **Maximum Violation.** If the violation is the first violation attributed to the airport tenant and is a civil penalty "maximum violation" as provided for in TSA's Enforcement Sanction Guidance Policy, the airport tenant may cure the breach by paying to the airport operator the costs incurred by the airport operator in the way of any fines and penalties imposed by the TSA. The airport tenant may cause all

of airport tenant's employees involved in the airport tenant's business operations on the airport property to undergo such security training as may be required by the airport operator. The total cost of the training shall be paid for by the airport tenant. If the violation is a second violation, or there are multiple violations, that is or are a civil penalty "maximum violation," the airport tenant shall pay to the airport operator the costs incurred by the airport operator in the way of any fines or penalties imposed by the TSA. In the case of a third maximum violation the airport operator shall have the right to unilaterally cancel this agreement, such cancellation to be effective thirty (30) calendar days after receipt by the airport tenant of written notice of cancellation of this agreement by the airport operator.

(4) **Mitigation of Breach.** TSA has a policy of forgoing civil penalty actions when the airport operator detects violations, promptly discloses the violations to TSA, and takes prompt corrective action to ensure that the same or similar violations do not recur. This policy is known as the TSA Voluntary Disclosure Program Policy, and is designed to encourage compliance with TSA regulations, foster secure practices, and encourage the development of internal evaluation programs. The airport tenant agrees that upon detecting a violation the airport tenant will immediately report it to the airport operator. Should the TSA ultimately determine that the violation was committed by the airport tenant, or an employee, agent, invitee, or licensee of the airport tenant, but the violation should result in the issuance of a letter of correction in lieu of a civil penalty, then the airport tenant shall reimburse the airport operator the total costs incurred by the airport operator in investigating, defending, mitigating, or taking of remedial measures as may be agreed to by TSA, to include but not be limited to reasonable attorney's fees and costs incurred in the investigation, defense, mitigation, or taking of remedial action measures. A violation resulting in the issuance of a letter of correction shall not be considered to be a breach of this agreement by the airport tenant.

(5) **Survival of Subsection.** This subsection shall survive the cancellation or termination of this agreement, and shall be in full force and effect.

27. **Hold Harmless; Indemnification; Defense; Release; Survival.** Notwithstanding any minimum insurance requirements prescribed elsewhere in this agreement, Gulfstream shall defend, indemnify and hold the County and the County's elected and appointed officers and employees harmless from and against (i) any claims, actions or causes of action, (ii) any litigation, administrative proceedings, appellate proceedings, or other proceedings relating to any type of injury (including death), loss, damage, fine, penalty or business interruption, and (iii) any costs or expenses (including, without limitation, costs of remediation and costs of additional security measures that the Federal Aviation Administration, the Transportation Security Administration or any other governmental agency requires by reason of, or in connection with a violation of any federal law or regulation, attorneys' fees and costs, court costs, fines and penalties) that may be asserted against, initiated with respect to, or sustained by, any indemnified party by reason of, or in connection with, (A) any activity of Gulfstream or any of its

employees, agents, contractors or other invitees on the Airport during the term of this lease, (B) the negligence or willful misconduct of Gulfstream or any of its employees, agents, contractors or other invitees, or (C) Gulfstream's default in respect of any of the obligations that it undertakes under the terms of this lease, except to the extent the claims, actions, causes of action, litigation, proceedings, costs or expenses arise from the intentional or sole negligent acts or omissions of the County or any of its employees, agents, contractors or invitees (other than Gulfstream). Insofar as the claims, actions, causes of action, litigation, proceedings, costs or expenses relate to events or circumstances that occur during the term of this lease, this section will survive the expiration of the term of this lease or any earlier termination of this lease.

8. Insurance Requirements.

a) Gulfstream will obtain or possess the following insurance coverages and will provide Certificates of Insurance to the County to verify such coverage;

Comprehensive Airline Liability. Gulfstream shall provide Comprehensive Airline Liability Insurance including but not limited to Comprehensive General Liability, Public Liability, Passenger Liability, Personal Injury Liability, Contractual Liability, Passengers' Checked and Unchecked Baggage Liability, Premises, Products (excluding Manufacturer's Product Liability), and Completed Operations Liabilities, Ground and In-Flight Hangarkeepers Liability, Cargo Legal Liability, Excess Automobile and Employers Liabilities. The limits shall not be less than;

As respects Comprehensive Airline Liability Insurance, Combined Single Limit Bodily Injury (including passengers), Property Damage and Personal Injury (Passengers only): at least US\$100,000,000 any one occurrence/offense, in the aggregate annually as respects Products, Completed Operations and Personal Injury Liabilities. Subject to AVN48B or its equivalent.

As respects Personal Injury to Third parties other than passengers, US\$25,000,000 any one occurrence, any one offense, in the aggregate annually.

As respects Cargo Legal Liability, US\$5,000,000 each occurrence.

As respects Excess Automobile and Employers' Liabilities, This insurance to pay up to the difference between the underlying primary policy limit of US\$1,000,000 and a total limit of US\$25,000,000 and one occurrence/offense and in the aggregate annually as applicable.

Equipment Insured: Any aircraft owned and/or operated by the Named Insured. Agreed Values as declared to insurers.

Employer's Liability. Gulfstream shall provide Employer's Liability insurance with limits of not less than;

\$1,000,000 Bodily Injury by Accident,

\$1,000,000 Bodily Injury by Disease, policy limits and

\$1,000,000 Bodily Injury by Disease, each employee.

b) The Monroe County Board of County Commissioners will be included as "Additional Insured" on all policies, except for Worker's Compensation.

c) All insurance policies must specify that they are not subject to cancellation, non-renewal, material change, or reduction in coverage unless a minimum of thirty (30) days prior notification is given to the COUNTY by the insurer.

d) The acceptance and/or approval of Gulfstream's insurance shall not be construed as relieving Gulfstream from any liability or obligation assumed under this agreement or imposed by law.

e) Gulfstream shall maintain the required insurance throughout the entire term of this agreement and any extensions which may be entered into. The County, at its sole option, has the right to request a certified copy of any and all insurance policies required by this lease. Failure to comply with this provision shall be considered a default and the County may terminate this agreement.

Any deviations from these General Insurance Requirements must be requested in writing on the COUNTY prepared form entitled, "Request for Waiver of Insurance Requirements" and be approved by Monroe County Risk Management.

29. Mutual Review.

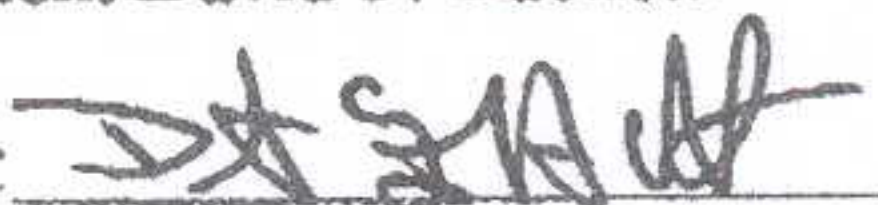
This agreement has been carefully reviewed by Gulfstream and the County, therefore this agreement is not to be construed against either party on the basis of authorship.

28th IN WITNESS WHEREOF, the parties have caused this lease to be executed this
day of February, 2006.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first
appearing above.

Gulfstream International Airlines, Inc.
The Airline

By: President David F. Hackett

Signature: 

Monroe County
The Airport

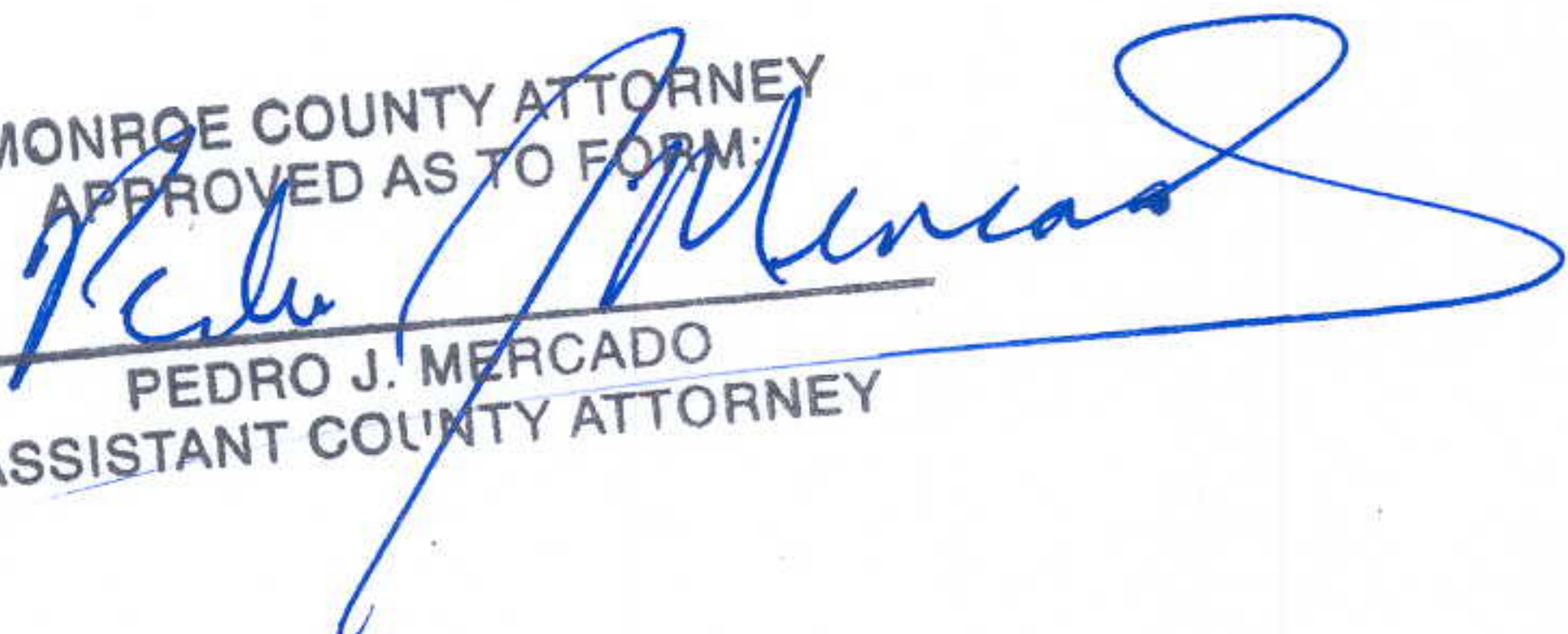
By: Mayor Charles "Sonny" McCoy

Signature: _____

Attest: Monroe County Clerk

Signature: _____

MONROE COUNTY ATTORNEY
APPROVED AS TO FORM:


PEDRO J. MERCADO
ASSISTANT COUNTY ATTORNEY